



Plaintiff contends this argument is untimely since it was not included in Defendant's initial summary judgment motion and, Plaintiff contends, this argument goes beyond the scope of additional discovery authorized by the Court.

In response, Defendants concede that this argument was not made in their initial motion, but they note that nothing in the Court's June 15, 2015, Order re-opening discovery and allowing Defendants to file a revised summary judgment motion so limits Defendants. On the contrary, a subsequent order authorized Defendants to make "any new arguments they wish[ed] to present." Doc. 274 at ¶ 2. They also observe that some of the information supporting their argument was learned from witnesses identified and interviewed *after* discovery was reopened, so the argument could not have been made in its present form before discovery was reopened.

In her reply brief, Plaintiff argues Defendants knew of Plaintiff's failure to warn claims for several years. She does not, however, discuss the text of the Court's subsequent order authorizing Defendants to make new arguments, nor does she dispute that Defendants learned additional information supporting their argument *after* discovery was reopened.

The Court finds no merit to Plaintiff's argument. The motion to strike (Doc. 288) is DENIED.

**IT IS SO ORDERED.**

Date: December 22, 2015

/s/ Greg Kays  
GREG KAYS, CHIEF JUDGE  
UNITED STATES DISTRICT COURT